

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 153 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ORIENTAL INSURANCE CO.LTD.

Versus

ABDULGANI ABDULBHAI SODPURIA SINCE DECD.THRU HIS HEIR & L.R

Appearance:

1. First Appeal No. 153 of 1990
MR RAJNI H MEHTA for Petitioner No. 1
MR HM PARIKH for Respondent No. 1-1/5

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

1.1 The appellant- original opponent no.2 has challenged the judgment and award of learned Civil Judge (Senior Division) and Ex-Officio Commissioner for W.C. at Nadiad in Workmen's Compensation Case No. 69 of 1987 awarding the original applicant-claimant an amount of Rs. 1,06,785/- being the compensation, Rs. 53,392.50 being the penalty at 50% of compensation and Rs. 3500/- for medical expenses. The Commissioner for Workmen's Compensation also awarded 12% interest and held that the appellant as well as the original owner are jointly and severally liable for payment of compensation to the original claimant- present opponents no. 1/1 to 1/5 who are legal heirs of original claimant.

2.1 The original claimant who has expired and whose legal heirs are now brought on record by Court's order dated 14.2.2003 (hereinafter referred to as 'the claimants of deceased') was a rickshaw driver and he was employed in service as a driver of rickshaw no. GTJ 8297 owned by original opponent no.1- present opponent no.2. It is the case of the claimant that while discharging his duties as per the instructions of the original owner in view of his relation with the original owner of master and servant, on 22.7.1987, during the course of his employment, while he was coming with passengers from Kheda to Nadiad with a normal speed and on correct side, near Shankeracharya Nagar, he met with an accident with one truck No. GRU 8123 coming from the opposite side with full and excessive speed. The said truck dashed with the rickshaw and the driver and passengers sustained injuries and the rickshaw was also heavily damaged.

2.2 The claimant sustained injuries on stomach and other parts of body. He was given treatment in Civil Hospital, Nadiad for about a month and at the time of filing claim, he was also required to undergo operation. As per the evidence, he had sustained permanent disability and was unable to drive rickshaw. Therefore, he claimed that he had become 100% disabled to do any sort of work. At the time of accident, the claimant was only 27 years old and getting monthly salary of Rs. 1000/- and after the accident, he was relieved by his master namely original opponent no.1 and there was no livelihood and no vocation which he could do. The original claimant had also served notice upon the original owner to pay due salary and compensation, but no amount was paid by the opponent no.1. The rickshaw owner had insured the vehicle namely GTJ 8297 with opponent no.2 Insurance Company and the opponent no.2 had also not

paid any amount though the opponent no.2 was also jointly and severally liable to pay the amount of compensation along with opponent no.1 and hence the application was preferred under the Workmen's Compensation Act against the original owner as well as Insurance Company.

3.1 The opponent no.1 filed his written statement at Ex. 14 and contended that the application was not correct and denied the contents of the application. He disputed about having any knowledge that the rickshaw was coming from Kheda to Nadiad with normal speed and on the correct side of the road; he also disputed having knowledge that the claimant sustained injury on stomach and other parts of the body; he also disputed having knowledge that the claimant was admitted in Civil Hospital for treatment for about one month and he was to undergo operation. He also disputed having knowledge that the claimant was getting Rs. 1000/- as salary. He also disputed having any knowledge that the claimant was unable to do the work of rickshaw driving. He admitted that he was the owner of rickshaw which had met with an accident and the same was insured with opponent no.2 and he had insurance policy from 12.8.1987 to 11.8.1988. It was admitted that the original claimant was employed as a driver and was serving as a driver with opponent no.1 and he was having valid licence. It was also true that the said rickshaw met with an accident with truck no. GRG 8123 on 22.7.1987 and the claimant sustained serious injuries and he was hospitalised. The owner came to know about the same through police and he went to the hospital and immediately paid Rs. 1000/- to the claimant. He denied that the claimant was relieved from service and stated that the claimant had voluntarily given up service. He denied that the claimant had claimed any compensation from him. He stated that notice was served upon him and it was replied. In the circumstances, he claimed that he was not required to pay compensation or penalty. Alternatively, he contended that if the Court comes to the conclusion that the opponent no.1 was required to pay compensation, then it was the liability of the Insurance Company and not of the opponent no.1. He admitted that the claimant was paid Rs. 35/- per day.

3.2 The opponent no.2 - Insurance Company filed written statement at Ex. 34 and contended that the application was not correct and the same was required to be dismissed with costs. The contents of the application were not admitted and it was contended that the Insurance Company was not liable under the Workmen's Compensation Act.

4.1 The trial Court framed issues at Ex. 60 and after considering the oral as well as documentary evidence, held that the opponents no.1 and 2 were jointly and severally liable for payment of compensation to the claimant.

5.1 Mr. Savjani for Mr. Mehta has contended that the Insurance Company is not liable to pay penalty and it is the liability of the owner; the order of Commissioner for Workmen's Compensation of payment of penalty at 50% of compensation i.e. Rs. 53,392.50 is required to be confirmed only against the owner and not against the Insurance Company.

5.2 Second contention of Mr. Savjani was that under the relevant statutory provisions, the claimants are entitled to 6% interest and not 12% and, therefore, the order of the Commissioner for Workmen's Compensation awarding 12% interest is contrary to the statutory provisions and, therefore, the award is required to be modified to that extent.

5.3 Third contention raised by Mr. Savjani was that though the original claimant had claimed Rs. 80,612/-, the Commissioner for Workmen's Compensation has awarded Rs. 1,06,716.85.

6.1 It was submitted by Mr. Parikh that since the original owner was insured and notice was also served on the Insurance Company, Insurance Company was liable to pay penalty. Regarding interest part, Mr. Parikh was not in a position to show anything since in view of the fact that the provision of 12% interest was amended subsequently, to that extent, the order of the Commissioner is liable to be modified. Regarding the third contention, Mr. Parikh submitted that the Commissioner, after considering the income of the claimant, permanent partial disability of the claimant and the multiplier of 213.57, has awarded compensation to which the claimant was entitled under the provisions of the Act.

7.1 We have considered the arguments of both the sides. The first submission of Mr. Sanjwani that the penalty is the liability of a criminal nature which is required to be paid by the owner and if he does not pay, then that is his personal liability which cannot be recovered from the Insurance Company and the claimants are entitled to recover the said amount from the owner. In support of his submission, Mr. Savjani has placed reliance on the decision of the Apex Court in the case of

Ved Prakash Garg Vs. Premi Devi and ors., (1997)8 SCC 1 wherein it has been held that the Insurance Company will not be liable to reimburse the additional amount of compensation by way of penalty imposed by the Commissioner on the insured employer under section 4-A(3)(b) of the Workmen's Compensation Act. In that view of the matter, the award of the Commissioner for Workmen's Compensation is required to be modified to the extent that the penalty cannot be recovered from the Insurance Company, but the same can be recovered from the original owner.

7.2 Regarding the second contention, the statutory provisions namely section 4A(3) reads as under:

"4.Compensation to be paid when due and penalty for default:

xxxxxxx

3. Where any employer is in default in paying the compensation due under this Act within onemonth from the date it fell due, the Commissioner may direct that in addition to the amount of arrears, simple interest at the rate of six percent per annum on the amount due together with, if in the opinion of the Commissioner, there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the employer by way of penalty."

In this view of the statutory provisions, the submission of Mr.Sanjwani is required to be accepted and the order regarding payment of 12% interest is required to be modified and the claimants are held to be entitled to 6% interest from the date of the accident till the amount is paid by the Insurance Company.

7.3 Third submission of Mr. Savjani is required to be rejected at threshold in view of the fact that this is a benevolent Labour Legislation and the Statutory Authority has awarded compensation as per the Statutory Schedule and the amount of compensation is directed to be paid taking into consideration the salary and all other relevant factors. Therefore, the third contention of Mr. Sanjwani has no force and is required to be rejected.

8.1 As per the award, the Insurance Company has deposited the amount of total compensation plus penalty and interest at the rate of 12% out of which the legal

heirs of the original claimant i.e. opponents no. 1/1 to 1/5 are entitled to the principal amount of Rs. 1,06,785/- along with interest at the rate of 6% per annum and costs as also the medical expenses of Rs. 3500/-.

8.2 The balance amount of penalty of Rs. 53,392.50 and the excess payment of interest on principal amount and the interest of 12% on penalty is required to be refunded to the Insurance Company.

8.3 The amount awarded to the claimants shall be paid within four weeks after encashing FD on verifying whether the said FD is maturing in the recent period or not keeping in mind that there is no loss of interest earned on FDR to the claimants.

9. Appeal is accordingly partly allowed with no order as to costs.

(Kshitij R.Vyas,J.)

(K.S.Jhaveri,J.)

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